

**UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BALDWIN & BALDWIN, L.L.P.	§	
	§	
VS.	§	CAUSE NO. 2:07CV022 (TJW)
	§	
MOTLEY RICE, LLC; JOSEPH F. RICE;	§	
NESS, MOTLEY, LOADHOLT,	§	
RICHARDSON & POOLE, P.A.; NESS,	§	
MOTLEY, LOADHOLT, RICHARDSON,	§	
POOLE, LLC; AND MRRM, P.A.	§	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
STATEMENT AND REQUEST FOR DISCOVERY
DEPOSITION HOUR ALLOCATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Defendants, subject to Defendants' Amended Motion to Dismiss as authorized by Federal Rules of Civil Procedure 12(b)(2) and 12(b)(5) and their Motion to Transfer Venue as authorized by 28 U.S.C. § 1404(a), and file this their Response to Plaintiff's Statement and Request for Discovery Deposition Hour Allocation. In support, Defendants show the Court as follows:

1. At the scheduling conference, Plaintiff's counsel requested eighty (80) hours to depose fact witnesses. Defendants' attorney proposed twenty (20) hours.
2. At this time, counsel for Defendants anticipates deposing the following:
 - a. Scott Baldwin, Sr.;
 - b. Scott Baldwin, Jr.;
 - c. Jack Baldwin;
 - d. Jay Cone;

- e. David Duke; and
 - f. Joe Cox.
3. Other individuals that would be prominent on Defendants' witness list include:
- a. James W. Ledie, attorney at Motley Rice LLC;
 - b. Joseph F. Rice, attorney at Motley Rice LLC;
 - c. Terre M. Bohman, Director of Accounting at Motley Rice LLC;
 - d. Anne Kearse, attorney at Motley Rice LLC;
 - e. Kathy Ernst, paralegal at Motley Rice LLC;
 - f. David Hoyle, attorney at Motley Rice LLC; and
 - g. Lynn Wener, paralegal at Motley Rice LLC.

This group likely has the most knowledge concerning the claims made by Plaintiff and the defenses in this case. All of these individuals are employees of Motley Rice; therefore, counsel for Defendants does not intend to notice their depositions.

4. Looking at Plaintiff's Statement and Request for Discovery Hour Allocation (pages 4-5), counsel for Plaintiff has identified by name six (6) other potential witnesses, who are:

- a. Paul Whaley;
- b. Albert McPhail;
- c. Dr. Robert Palmer;
- d. Jill Dunnier;
- e. Sam Baxter; and
- f. J.J. Camp.

In addition, other potential witnesses are generally mentioned, but none by name. The potential

witnesses are all from Canada, and counsel for Defendants may need to depose some Canadian witnesses, too.

5. Assuming that all the named individuals are actually deposed by the parties, at least nineteen (19) depositions will be completed prior to trial. Also, additional depositions (such as the depositions of the Canadian witnesses) may be required. It is doubtful that all of these depositions will take the full seven (7) hours allowed by Federal Rule of Civil Procedure 30(d)(2). Moreover, if Plaintiff's counsel asks their clients—the Baldwins—any questions at their depositions, the questions will likely be very limited. Likewise, counsel for Defendants will probably ask the Motley Rice employees very few questions, if any.

6. Given the fairly large number of individuals identified by the parties, counsel for Defendants now agrees that twenty (20) hours is probably not sufficient time to complete the depositions in this case. Eighty (80) hours, however, still seems to be on the excessive side. Accordingly, counsel for Defendants would propose to increase the number of deposition hours for fact witnesses to no more than fifty (50) hours per side. If additional time is required, then either side can file a motion with the court asking for more time and explaining why the additional time is needed.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this the 27th day of June, 2007, in the following manner:

 X Via ECF

/s/ Charles H. Clark

Charles H. Clark